IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03/03/2003

CORAM

THE Honorable MR JUSTICE E.PADMANABHAN

WRIT PETITION NO.18373 OF 1999

N.Vedachalam ... Petitioner

-Vs-

1. Chennai Metropolitan Water
Supply and Sewerage Board
rep. by its Board of
Directors by its General
Manager, 1, Pumping
Station Road
Chintadripet, Chennai-2.

2. The Managing Director
Chennai Metropolitan Water
Supply and Sewerage Board
1, Pumping Station Road
Chintadripet
Chennai 2. ... Respondents

Petition under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order passed by the second respondent in his Proc.No.CMWSSB/P&A/VC3/8914/94 dated 19.4.1999 as confirmed by the first respondent in Proc.No.CMWSSB/VIGILANCE/VC2/26070/99 dated 30.9.199 9 quash the same, and direct the respondents to reinstate the petitioner in service with all the consequential benefits.

!For Petitioner : Mr. C. Selvaraju

^For Respondents : Mr. B.Shanthakumar

:O R D E R

The writ petitioner, an employee of the respondent Board has prayed for the issue of a writ of certiorarified mandamus calling for the records pertaining to the proceedings of the second respondent in his Proc.No.CMWSSB/P&A/VC3/8914/94 dated 19.4.1999 as confirmed by the first respondent in Proc.No.CMWSSB/VIGILANCE/VC2/26070/99 dated 30.9.19 99 and quash the same, and direct the respondents to reinstate the petitioner in service with all the consequential benefits.

2. Heard Mr. C.Selvaraju, learned counsel appearing for the writ petitioner and Mr.B.Santhakumar, learned counsel appearing for the respondents 1 and 2.

3. In this case, the counsel for the writ petitioner advanced the two substantial contentions:-
(A) The original authority who passed the impugned order was also a member of the appellate authority and confirmed the proceedings which is contrary to principles of natural justice.

(B) It is contended that in terms of the service regulations framed by the Board in respect of charges framed, the Board has to establish the charges in the domestic enquiry by letting in oral or documentary evidence and merely on surmises and without any proof whatsoever, the petitioner cannot be held guilty of the charges. In other words, no evidence at all has been let in to establish the charges framed against the petitioner but the petitioner has been straightaway examined and orders have been passed which is contrary to all fundamentals or disciplinary proceedings.

4. The petitioner was holding the post of Administrative Officer in charge of Stores/materials Department while alleging that there has been large scale deficiency in the stock to the tune of Rs.36,34,920.8 2 paise as well as excess materials to the value of Rs.90,400.69 paise, four charges were framed against the petitioner. The following Charges were framed:-
"Charge No.1 :-
That he has not handed over the charges in spite of memo with ulterior motive to suppress the fact of willful and deliberate improper receipts and issues of materials which resulted in shortage of Rs.36,34 ,920.82. His failure to hand over the charges till the date of his suspension, clearly shows his deliberate disobedience to his superiors and office instructions which leads to serious misconduct under regulation 6(1) of MMWSS Board employees (D&A) Regulations.

Charge No.2 :-
That he has not performed his duties as Stores Manager carefully. The receipts and issues of materials are made without observing the required procedures which resulted in shortage of materials to the value of Rs.36.34.920.82. His negligence in duty and inefficient management of stores amount to serious misconduct under regulation 6(37) of MMWSS Board employees (D&A) Regulations, 1978 and his dishonesty in connection with Board's property or transactions amounts to serious misconduct under Regulation 6(23) of MMWSS Board Employees Service (Discipline & Appeal) Regulations, 1978.

Charge No.3 :-
That he has issued large number of items on loan basis without authority for a value of Rs.39,20 lakhs as on 8.6.1994 and the same is still unadjusted. The loan transaction carried out by him is ultra vires and resulted locking up of Board's money by way of loan of material which amounts to serious misconduct under Regulation 6(37) of, MMWSS Board Employees Service (Discipline & Appeal) Regulations, 1978.

Charge No.4 :-
That his act of improper accounting of materials and maintaining of stores records resulted in shortage of materials to the value of Rs.3 6,34,920.82 and excess of materials to the value of Rs.90,400.69. His carelessness and indifference attitude in maintaining the stores in his custody resulted in loss to the Board and that he derelicted in his duties and responsibilities under Regulation 6(20) of MMWSS Board (D&A) Regulations, 1978.

5. The petitioner denied the charges and the disciplinary authority appointed Special Deputy Collector,(Taxes) as enquiry officer to conduct enquiry in respect of the said four charges. It is stated by the respondent that the enquiry officer conducted the enquiry on 23.9 .196 and reported that the delinquent is responsible for the lapses namely, failure to bring the shortage to the notice of the higher officers and failure to comply with the other directions. Based upon the report of the enquiry officer which was communicated to the petitioner for which the petitioner also submitted his objections, recording findings of the enquiry officer, the punishment of dismissal from service was imposed by the Managing Director. Being aggrieved, the petitioner preferred an appeal before the Board which is the appellate authority and the Board resolved to confirm the punishment of dismissal by proceedings dated 30th September, 1999. Being aggrieved, the present writ petition has been filed.

6. In the counter filed by the respondents 1 and 2, the first respondent sought to justify the impugned proceedings on the ground that the petitioner has specifically admitted the shortage, besides contending that the petitioner having been in charge of the stores, maintenance of accounts and the materials is accountable and liable for shortage of materials as disclosed during verification. It is contended that the disciplinary proceedings were initiated by competent authority and all the legal formalities were duly followed including enquiry conducted by the enquiry officer. The enquriy report was communicated to the petitioner, his explanation was considered and the disciplinary authority imposed the punishment of penalty of dismissal while agreeing with the employment committee. While referring to files, the first respondent contended that the petitioner is liable to make good the loss.

7. This court called upon Mr.B.Santhakumar, learned counsel for the respondent to ascertain as to whether the first respondent Mr.C.P. Singh, I.A.S., the then Managing Director was a party to the Board Meeting which decided the appeal petition. Mr. B.Santhakumar, learned counsel after verification represented that Mr.C.P.Singh, I.A.S., the then Managing Director tookpart in the Board proceedings as one of the members of the Board while considering the appeal. This statement of fact as represented by the counsel for the respondent is recorded and on that basis orders are being passed.

8. A perusal of the charge memo would show that the petitioner was placed under suspension initially. Under Regulation 10(2) of The Chennai Metropolitan Water Supply and Sewerage Board Employees' (Discipline and Appeal) Regulations, four charges were framed. An enquiry officer was

appointed who sraightaway examined the writ petitioner, submitted his report based upon certain audit reports. After communicating the enquiry officer's report, the penalty of dismissal was imposed by the disciplinary authority and the same has been confirmed in appeal.

9. The following points arise for consideration in this writ petition:-
(A) Whether the impugned proceedings of respondents are liable to be quashed on the ground of violation of Regulation 10(2) of the Chennai Metropolitan Water Supply and Sewerage Board Employees' (Discipline and Appeal) Regulations, 1978 natural justice and against fundamentals of conducting disciplinary proceedings?
(B) Whether orders of the second respondent-appellate authority is violative of principles of natural justice and vitiated in that the original authority also took part in the Board Meeting where the appeal was placed and considered?

(C.) Whether the impugned proceedings are liable to be quashed for violative of principles of natural justice?

(D) To what relief the petitioner is entitled to?

10. Regulation 5 enumerates the penalties that could be imposed against an employee of the Board for good and sufficient reasons or for any misconduct. Sub clause (6) of Regulation 5 provides for dismissal from service of the Board. Regulation 6 enumerates the acts and omissions which shall be deemed to be misconduct. Regulation 7 prescribes the employees of the class or category who may be punished with penalties, the disciplinary authority or the appellate authority as the case may be for various punishments. Regulation 8 provides for institution of disciplinary proceedings against any Board servant for imposition of penalties specified in items 4(c)5 and 6 of the Rule 5. Regulation 9 prescribes the disciplinary authority in certain cases. Regulation 10 prescribes the procedure for imposing penalties. In respect of penalties namely, minor penalties, the regulation contemplates giving a reasonable opportunity to explain and make representation and before imposing penalty the same has to be considered. clause (2) of Regulation 10 prescribes the procedure for imposing major penalties namely dismissal, removal from service or compulsory retirement.

11. The said Regulation 10(2) mandates that the delinquent shall be given a charge sheet setting out the grounds on which it is proposed to take action, requiring the delinquent to answer the charge or charges in a written statement within a time to be fixed and also to state whether the delinquent desires oral enquiry or the individual to be heard. The regulation further provides that oral enquiry shall be held, if the employee desires. Even if a person has waived oral enquiry such enquiry shall be held by the authority concerned in respect of charge which are not admitted by the person charged and which could be proved only through the evidence of witness and as per the regulations specified in the schedule to the regulation. clause (3) of Regulation 10 provides for imposition of penalty after furnishing a copy of the report of the enquiry or personal hearing or both and after affording an

opportunity. The clause (5)(b) of Regulation 10 provides that requirement of clauses (1) an d (2) of Regulation 10 shall not apply when the person admits the charge or charges. Clause (7) of Regulation 10 provides for inspection of the documents by the delinquent. Regulation 15 provides for appeal and Regulation 16 provides for Review. Regulation 18 prescribes the procedure for appeal and Regulation 22 provides for consideration of appeals.

12. The schedule appended to the Regulations prescribes the procedure to be followed at the enquiry. The schedule mandates taht at the enquiry, oral evidence shall be heard as to such of those allegations as are not admitted. The Schedule reads thus:-

"SCHEDULE : PROCEDURE TO BE FOLLOWED AT THE ENQUIRY.
1. At the enquiry, oral evidence shall be heard as to such of those allegations as are not admitted. The employee shall be permitted to produce witness in his defence and cross-examine any witness on whose evidence the charge rests. The officer conducting the enquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The enquiry officer shall ask, in writing, the delinquent employee immediately after the enquiry is over whether he had a reasonable opportunity of presenting his case and if he has any complaint in this regard the enquiry officer will examine the complaint and set right the matter. If it is considered that the alleged denial of reasonably opportunity is made with a view to delay the disciplinary proceedings, the enquiry officer is competent to ignore the complaint and the reasons for not complying with the request shall be recorded. After the enquiry has been completed, the person charged shall be entitled to put in, if he so desires a further written statement of his defence."

13. Factually, in this case admittedly no one has been examined to substantiate the charges before the enquiry officer by the respondent Board. Straightaway the delinquent has been examined by the enquiry officer. This court called upon the counsel for the respondent to produce the file. The enquiry report is found in pages 497 to 531. First part is the Introduction. Second part is the charges framed. Third part is the Explanation. Fourth part is the gist of deposition given at the time of enquiry and part five relate to findings. The part relating to gist of deposition reads thus:-

Gist of Deposition given at the time of Enquiry
During enquiry, the delinquent has contended that the total loss of materials furnished under charge-I as Rs.36,34,920.82 is not correct. He has cited that the actual cost of 38.24 metres of pipe is Rs.323 93.10 whereas it has been noted in the statement given to him as 3345 97.54 and that there are variations like this. He has also informed at enquiry that the store return given on 8.1.1994 to the value of Rs.16346.98 has not been accounted for. He has also reiterated at the time of enquiry that the Auditors in their Audit Report for 90-91 and 9 1-92, have clearly brought out that there is need to have one more J.A.O. At least so that duties can be divided based on important materials.

The delinquent has further contended that the loan Register maintained

in Ekkattuthangal Stores has not been made the value of various materials given on loan basis without authority is not correct, that the correct amount is Rs.39,20,615.56 and that out of which Rs.12,29,0 38.43 relates to the period of Thiru M.G.Venugopal. He has further stated that he has adjusted Rs.15,41,916.15, that a sum of Rs.2,42,872.74 noted as value of pipes is excessive, and that a sum of Rs.4,31,6 38.83 is due from TWAD Board. He has also requested at the time of enquiry, to give him the loan Register to clear the remaining items.

The delinquent has also produced a working sheet at the time of enquiry and contended that the total shortages of materials is Rs.2,56,04 7.06. The delinquent has further informed that S.M.(M) and that it is reported to be missing now.

14. It is admitted that except the delinquent official who has been cross examined by the enquiry officer straightaway, no other witness has been examined. The deposition of the delinquent which is being summarised by the enquiry officer reads thus:-

Enquiry : What is your explanation for charge-I?
Reply N.V. : I have already submitted a detailed explanation in my explanation dated 14.6.1976. In the charge memo, it has been mentioned in charge No.I that the total loss of materials as Rs.36,34,920.82. But this figure is not correct. For instances, the cost of 38.24 metres of pipe has been noted as Rs.3,34,597.54 in the statement farm had to me. But actually, the cost of pipes comes to Rs.32,393.10. Like this, there are also variations in other items. I have no other points to be furnished now. My detailed explanation may also be perused.

Enquiry : Can you specifically say the other items where there are variations in the cost of materials furnished.

Reply : I cannot furnish specifically any other items. The store return given on 8194 has not been accounted for in the stores. (value Rs.16,346.98)
Charge No.2

Reply : In the 1990-91 & 91-92 Audit Report, the Auditors under para 53-Administrative set up, have clearly brought out, that there is need to have one more JAO at least so that duties can be divided based on import out. materials viz., a JAO look after specials and another JAO to look after pipes. I am giving a xerox copy of the relevant portion of audit report. It could eb seen that on e JAO canot perform the duties as Stores Manager.
Charge No:3: The loan register maintained in EKT stores has not been made available to me. Rs.39.20 lakhs mentioned under charge 3, as the value of various materials given on loan basis without authority is not correct. The correct amount is Rs.39,20,615.56 Out of this, a sum of this, a Sum of Rs.12,29,038.43 relat es to the period of Thiru N.G.Venugopal. Out of balance of Rs.26,91,572.13, I have adjusted Rs.15,41,916.15. A sum of Rs.2,42,872.74 has been noted as value of pipes which is excess. This amount has to be deducted. A sum of Rs.4,3 1,638.83 is due from PWADBD as they obtained pipes (1000 mm), (250 mm) Rubber gaskets on loan basis. I want the loan register to

clear the remaining items.
Charge No.4: According to my calculation the total shortage of materials comes to Rs.2,56,047.06. I am giving a working sheet for the above amount.

Question:
Do you like to represent any other point with regard to the charges levelled against you?
Reply:
Except copy of Auditors report of this Board for the years 1990-91 and 1991-92, the working sheet given, I have no other documents to be produced. I have been given any opportunity to offer my explanation. In the absence of the loan register maintained by me, I cannot given full-fledged explanation. But I have handed over the loan register to the then SM(M. Now the Loan Register is said to be missing. I do not want any other documents to be perused."

15. It is clear from the above, the delinquent has been straightaway cross examined by the enquiry officer himself and no witness has been examined to substantiate the imputations or prove the charges by the employer. It is not as if the delinquent has admitted the imputations or charges. Therefore it is clear it is not only against the regulation 10(2) but also against all cannons of service jurisprudence. The minimum requirement being unless the charges are admitted, it is incumbent on the part of the employer to substantiate the charges by leading evidence both oral and documentary. This has not been done at all. Mr.Santhakumar, learned counsel for the respondent sought to sustain the proceedings. But the delinquent has not only denied the charges, but also denied that he is not the cause for various short falls and he cannot be found guilty of the charges. In this respect it is the settled legal position that burden of proof is on the employer to substantiate the charges and the delinquent has to defend himself by letting in such evidence to exculpate him.

16. In Selvaraj Vs. MMDA, reported in 1990 (I) MLJ, 45, and this court held that examination of delinquent straightaway without department letting in evidence is illegal. In 1986(2) LLN 694, this court held that the delinquent official straight away being questioned by the enquiry officer at length and in great detail, which means the enquiry officer assume the role of cross examiner and by such conduct, the enquiry officer assume the role of both prosecutor and judge and his findings are vitiated.

17. In State of Assam Vs. Bimal Kumar Pandit, reported in AIR 1963 SC 1612, the Apex Court held thus:-

"It is now well settled that a public officer against whom disciplinary proceedings are intended to be taken is entitled to have two opportunities before disciplinary action is finally taken against him. An enquiry must be conducted according to the rules prescribed in that behalf and consistently with the requirement of natural justice. At this enquiry, the public officer concerned would be entitled to test the evidence adduced against him by cross examination,where necessary and to lead his own evidence. In other words, at this first stage of the proceedings he is entitled to have

an opportunity to defend himself. When the enquiry is over and the enquiring officer submits his report the dismissing authority has to consider the report an decide whether it agrees with the conclusions of the report or not. If the findings of the report are against the public officer and the dismissing authority agrees with the said findings, a stage is reached for giving another opportunity to the public officer to show why disciplinary action should not be taken against him. In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. Here is no doubt that in response to this notice, he public officer is entitled to show cause not only against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words, the second opportunity enables the public officer to cove the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him, is either unduly severe or not called for."

18. Following the above pronouncements this court holds that the enquiry in this case is vitiated and it is in contravention of the Chennai Metropolitan Water Supply and Sewerage Board Employees' (Discipline and Appeal) Regulations, 1978 referred above.

19. As regards the second point, admittedly the original authority namely the then Chairman and Managing Director who imposed the punishment of dismissal was one of the member of the Board which considered and decided the appeal and it is he who presided over the Board Meeting. This is not disputed. Therefore, it is clear that Mr.C.P.Singh, IAS, who was the then Managing Director who imposed the punishment of dismissal as original authority has also taken part in considering the Appellate Order passed by the Board by his presiding over the Board. This is in violation of principles of natural justice as it is biased and on this ground also the proceedings of the appellate authority deserves to be quashed.

20. In the foregoing circumstances, the writ petition is allowed. The impugned proceedings are quashed. However, liberty is given to the respondents to proceed de novo if so decided. The parties shall bear their respective costs.

Internet:yes
Index:yes

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Copy to:-

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